

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
HILLIARD ENERGY LTD., : Docket #1:21-cv-06181-  
 : LTS  
Plaintiff, :  
- against - :  
TRISHE RESOURCES INC. et al, : New York, New York  
 : July 28, 2022  
Defendants. :  
----- : REMOTE PRELIMINARY  
 : INJUNCTION SHOW CAUSE  
 : HEARING

PROCEEDINGS BEFORE  
THE HONORABLE ANDREW L. CARTER, JR.,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: LAW OFFICE OF A. MANNY ALICANDRO  
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For the Trishe  
Defendants: JOHN MURPHY & ASSOCIATES, P.C.  
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For Defendant, Punjab  
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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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THE CLERK: -- for a telephone Order to Show Cause  
Hearing for a preliminary injunction in case number 21-cv-  
6181, Hilliard Energy vs. Trishe Resources et al.

Counsel, please state your appearances for the  
plaintiff?

MR. A. MANNY ALICANDRO: Hi. Good morning. A.  
Manny Alicandro, the Law Office of A. Manny Alicandro,  
appearing for plaintiff Hilliard Energy LTD.

THE CLERK: And for the Trishe defendants?

MR. JOHN MURPHY: Good morning. It's John Murphy  
of John Murphy & Associates, P.C., appearing on behalf of  
the Trishe defendants.

THE CLERK: And for the defendant, Punjab?

MR. JOSEPH E. CZERNIAWSKI: This is Joe  
Czerniawski from Condon and Forsyth on behalf of the  
defendant, Punjab National Bank (International) LTD.

MR. ELI BURTON: Eli Burton, also of Condon and  
Forsyth on behalf of Punjab.

THE CLERK: Thank you.

HONORABLE ANDREW L. CARTER, JR. (THE COURT): All  
right, good morning. Let me just get a sense of where we  
are with certain matters. As of yesterday it seemed that  
the funds that were going to be deposited into the account  
were not deposited into the account of the Punjab

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2 defendants, and the defendants were claiming as a result  
3 they have not committed the alleged breach that would exist  
4 according to the plaintiffs if the defendants did not wire  
5 the 12% within one business day of receiving the account.  
6 Where are we in terms of those accounts and whether or not  
7 they have been deposited into the account? Let me hear  
8 from the Punjab defendants first, and then I'll hear from  
9 anyone else if they have anything else to add on that  
10 particular issue.

11 MR. CZERNIAWSKI: This is Joe Czerniawski  
12 speaking, your Honor. My understanding from the last time  
13 I spoke with my clients is that the money is not in the  
14 account. I asked him to inform me as soon as they have  
15 evidence the money is in the account. So I don't believe  
16 it's there. My further understanding, based on  
17 conversations with our local counsel, is while this is not  
18 a lot of money by New York standards, for a very small  
19 county of 3,000 people in Ohio, it is -- it's a lot of  
20 money, and it was spread among several community banks in  
21 the area. So it may take a little bit of time for them to  
22 gather up -- and I think that was to comply with FDIC  
23 requirements. That's just a little background there. So I  
24 think it's going to take them a little bit of time to make  
25 sure all the money is gathered up into one account to then

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wire into our account.

THE COURT: Okay. Thank you.

Anything on that particular issue from the Trishe defendants?

MR. MURPHY: No, your Honor.

THE COURT: Okay. Anything on that particular issue from the plaintiffs?

MR. ALICANDRO: Yes. Good morning, your Honor. A. Manny Alicandro for plaintiffs. We're concerned about this account, which I'm sure we'll get into more details, but, you know, there's a one-day provision in that --

THE COURT: Hold on. Hold on. Right now I just want to know if you have anything to add in terms of the factual assertion that the money is not in the account as of today. Do you have anything information on that --

MR. ALICANDRO: I also want to raise a question that in correspondence to the Court in Ohio, counsel was --

THE COURT: We'll get to that, but hold on; do you have anything else to add on that particular issue?

MR. ALICANDRO: No, your Honor.

THE COURT: Do you have any factual -- do you have any reason to believe that the money is in the account now?

MR. ALICANDRO: I do not.

THE COURT: Okay. All right, so now let's get to

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the matter at hand. I'll hear from plaintiff's counsel on this claim of irreparable harm. Let me hear from plaintiff's counsel.

MR. ALICANDRO: Good morning, Judge Carter. So, again, this is Manny Alicandro for plaintiff Hilliard. So we have an overarching concern, obviously, in the matter before the Court with regard to contractual issues. There is a lot of confusion and ambiguity which we're presently hearing, which you just heard from defendants' counsel about the amount in the account. We do not know how much is in the account at Citibank; we do not know how much should be in the account at Citibank, so we're at a loss for that. What we do know is we are -- we should be getting and receiving 12%, one point -- of what we know should have been in the account was 1.9 million -- and that goes back a couple of years -- and then obviously, 12% of this 2.4 million from the Ohio funds, which we just spoke about.

What really concerns me is there are other references in the pleadings from the defendant about a sundry account; and more overarching, your Honor, what I'm concerned about is the fact beyond us not getting paid the 12% that we're due, there's language in the pleadings from the defendant about the usage of the accounts. My

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1 understanding is that this account at Citibank is a  
2 beneficiary account for Trishe by Punjab. In the pleadings  
3 for the defendant they make reference to the fact that this  
4 is a nostro account to be used for U.S. dollar currency  
5 transactions and other -- there are other third-party  
6 individuals which would be injured and harmed if this  
7 account was restrained. I'm at a loss for the purpose of  
8 an account which it's very clear in multiple agreements,  
9 your Honor, that have been presented to this Court with  
10 regard to the fact that this is a beneficiary account in  
11 accordance with, you know, general business laws of the  
12 state of New York. So I'm perplexed to why there's so much  
13 confusion and ambiguity that if you so decide to restrain  
14 this specific account. It is a specific account for the  
15 benefit of Trishe, and it shouldn't harm anyone else, any  
16 other clients of Punjab or Punjab writ large. Punjab is a  
17 large bank effectively owned by the government of India  
18 having offices in India and England. I'm hard pressed to  
19 think that Punjab only has one account that they use for  
20 U.S. dollar transactions and that account is this  
21 beneficiary account at Citibank for Trishe.  
22

23 THE COURT: Okay. But let me hear from you  
24 specifically on the issue of irreparable harm to  
25 plaintiffs.

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MR. ALICANDRO: Sure. I mean, we have relationships -- there's questions of good will because my client is very well known in its space. And there's clearly issues with regard to his good will and his standing in the community that we keep getting the runaround, we're not getting paid for services that were provided years ago now. So this is clearly an issue of reputational damage and good will that in accordance -- you know, and I think the Second Circuit has rendered decisions with regard to beyond monetary damages, you know, good will is a fundamental consideration.

THE COURT: Okay. Anything else from plaintiffs regarding irreparable harm?

MR. ALICANDRO: If you look generally -- you know, look, this is a breach-of-contract action, your Honor, and we have our opposition to the motion to dismiss that was filed by defendants, which we will file shortly, in accordance with the schedule that we all agreed upon.

My overarching concern is that, you know, we don't know what's going to happen with the monies in this account. We're not quite sure how the monies have been used; we're not sure why there's so much confusion about the underlying account and its usage, as I mentioned previously, in my previous statements. And I'm, you know,



1 even worried about the fact if you look at the pleadings in  
2 Ohio or looked at the pleadings in Ohio, counsel in Ohio  
3 actually asked for a check. So, in addition to requesting  
4 those monies, the Ohio funds, be wired to the Citibank  
5 account, they also ask for potentially the Ohio court to  
6 issue a check to counsel. It's clearly a breach of the  
7 tri-party agreement. So I'm concerned that because Punjab  
8 is a multi -- is a large bank but it's domiciled in India  
9 and has accounts in U.K. but not accounts in the U.S., that  
10 if this money leaves that account and you decide in our  
11 favor with regard to the breach of contracts, we have no  
12 idea what's in that account, we have no idea how we'll be  
13 able to collect the monies in that account.

14  
15 THE COURT: Okay. Let me hear from defendant  
16 Trishe, if you have anything to say regarding irreparable  
17 harm.

18 MR. MURPHY: Your Honor, I would -- this is John  
19 Murphy for the Trishe defendants. I mean, I speak, to be  
20 frank, I think as your Honor probably understands, this is  
21 really between Hilliard and Punjab. So I will, I suppose  
22 in parliamentary style, refer my time to Mr. Czerniawski  
23 for those arguments, if I may.

24 THE COURT: Okay. All right, let me hear from the  
25 other defendant if he has anything to say regarding

1  
2 petitioner's claim of irreparable harm.

3 MR. CZERNIAWSKI: Sure, your Honor. First, I  
4 mean, the standard is usually the money damages should,  
5 when they suffice, there isn't a basis for injunctive  
6 relief. The only thing we've heard that doesn't qualify is  
7 something about trademark and loss of good will. And,  
8 first of all, I'll point out that was not put forward in  
9 any form of a sworn statement. There were simply  
10 statements in a reply brief about it. So there's nothing  
11 before the Court on that point. But, second of all, I  
12 mean, if what we just heard could qualify as something to  
13 get around the requirement that where money damages suffice  
14 it's equitable injunctive relief, pretty much everybody  
15 could plead that. I mean, here we've got a case, the  
16 money's there, we've got a large international bank with  
17 admittedly an account to deal with U.S. dollars. And so  
18 there you -- obviously U.S. assets. Right? But also  
19 assets all over the world; we're not going anywhere.  
20 Clearly, there's no danger of the judgment not being  
21 satisfied. There's just -- it's not here. There's no  
22 basis to assert irreparable harm.

23 I'm happy -- I don't think there's anything that I  
24 said that was ambiguous or confusing, but I'm happy to also  
25 address things that were brought up regarding the various

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accounts at issue, but only if your Honor wants me to. I realize your Honor's time is limited.

THE COURT: No, that's not necessary.

MR. CZERNIAWSKI: Okay.

THE COURT: Okay. So I will deny the petitioner's request for injunctive relief. The petitioner has not established their irreparable harm. That motion for a preliminary injunction is denied, and the parties should go ahead and proceed with the briefing on the motion to dismiss. And Judge Swain will handle that, as well as the rest of this matter.

We ad adjourned. Thank you.

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Hilliard Energy LTD. v. Trishe Resources Inc. et al., Docket #21-cv-06181-LTS, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: August 5, 2022